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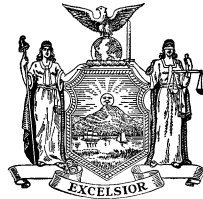
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Secretary

March 17, 2003

Hon. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 12 Street, SW
Washington, D.C. 20554

RE: Comments of the New York State Department of Public Service in the Matter of the Petition of the Cellular Telecommunications & Internet Association (CTIA) for Forbearance From Further Increases In the Numbering Utilization Threshold; CC Docket No. 99-200

Dear Secretary Dortch:

The New York State Department of Public Service ("NYDPS") submits these comments in response to the Federal Communications Commission's ("Commission") Public Notice (Notice) issued February 24, 2003. The Notice seeks comment on the petition of the Cellular Telecommunications & Internet Association (CTIA) for forbearance from any further increases in the numbering utilization threshold that a carrier must demonstrate prior to obtaining additional numbering resources.¹ CTIA contends that

¹ The numbering utilization threshold is the percentage of numbers that a carrier must use before it is assigned new numbering resources, e.g., a 1,000 number block or a full central office code. Under the present standard, a carrier is required to assign 65%, or 650 numbers, in a particular block prior to requesting additional numbers. The present rule requires that the percentage of numbers assigned be increased to 70% in June 2003 and to 75% in June 2004.

the significant extension of the forecasted exhaust date of the North American Numbering Plan (NANP) constitutes changed circumstances that warrant forbearance from further increases.

CTIA's petition argues that, in light of the delay in the forecasted exhaust of the NANP,² implementing any further increases in required utilization levels would unnecessarily increase the risk of carriers being unable to serve customers because the demand for numbers could not be met. Additionally, CTIA submits that the benefits would be far outweighed by the risks and costs; thus, the implementation of further increases would be arbitrary. Also, if higher utilization levels should go into effect, a bias against high volume carriers would result, which could harm the competitive operation of these carriers, in contravention of the public interest.

The NYDPS finds CTIA's arguments to be without merit and urges the Commission to deny the petition. In New York, we addressed the utilization threshold for carriers and concluded that 75% percent represents a reasonable level of utilization before a carrier can obtain additional resources.³ The Commission recognized that a phased-in approach was not necessary where states reached a higher threshold⁴ provided they did not exceed 75%.⁵ New York continues to require that carriers demonstrate a 75% utilization level before they obtain additional central office codes. Therefore, if the Commission grants CTIA's petition, NYDPS requests that the 75% threshold in New York not be disturbed.

² According to CTIA, the North America Numbering Plan Administration's estimate for exhaust extends into 2025 at the earliest and 2034 at the latest (CTIA Petition at 6). When the threshold utilization was adopted, it was estimated that the NANP would exhaust before 2010.

³ Case 98-C-0689, Telephone Numbering Resources, Order Instituting State-Wide Number Pooling and Number Assignment and Reclamation Procedures (issued March 17, 2000), pp.7-9, 12.

⁴ Second Report and Order, Order on Reconsideration, CC Docket Nos. 96-98 and 99-200; Second Further Notice of Proposed Rulemaking, CC Docket No. 99-200, (released December 29, 2000).

⁵ Id.; Third Report and Order and Second Order on Reconsideration in CC Docket Nos. 96-98 and 99-200 (released December 28, 2001), ¶ 53.

Moreover, CTIA's argument that high volume carriers might be unable to maintain a sufficient inventory of numbers is unfounded. Our experience in New York, based upon the 75% utilization level, is that carriers have not had this perceived difficulty. There has not been one complaint that a customer was unable to obtain service because a carrier had exhausted its numbering inventory.

Further, CTIA fails to acknowledge the safety valve mechanism established by the Commission.⁶ Under the Commission's rules, a carrier that does not meet the threshold utilization level, but requires additional resources in order to serve customers, can request that state regulatory authority waive the utilization requirement and direct the North American Numbering Plan Administrator (NANPA) to assign new numbering resources. Multiple carriers in New York have used this process to obtain additional numbering resources.

In addition, CTIA's argument that the costs associated with raising utilization levels from 65% to 75% has no merit. The difference between a 65% utilization threshold and a 75% threshold is only 100 numbers in a thousand number block. It is difficult to believe that this incremental difference could not be handled by the carrier's computers.

Finally, CTIA argues that decreased numbering demand, and the subsequent extended exhaust forecast for the NANP, also supports its view that "it is no longer necessary to ensure the careful management of this limited resource."⁷ Although significant benefits have been achieved through number pooling, it is far too early for the Commission to withdraw from the effective management of this limited resource. It is probable that the decreased demand for numbers can be attributed to the economic downturn of the last two years. With the continued proliferation of cell phones and secondary lines, and the potential for economic upturn, the demand for numbers could increase and surpass previous levels. More important is that as

⁶ Id., ¶¶ 57-66.

⁷ CTIA petition at 2.

voice over Internet protocol (VoIP) providers continue to penetrate the evolving market, even more numbers may be needed.⁸ Therefore, the Commission should not abandon the policies that have enabled carriers to achieve greater efficiency in their use of numbering resources.

CONCLUSION

For the reason stated above, the Commission should find that CTIA's petition for forbearance would not protect consumers and is not in the public interest. We urge the Commission to deny CTIA's request. Should the Commission choose to grant the petition, however, the NYDPS requests that it be permitted to continue to require a 75% utilization threshold for carriers in New York.

Respectfully submitted,

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⁸ The long term effects of VoIP service on numbering resource demand may be ameliorated by the adoption of certain kinds of standards, such as ENUM. The International Telecommunication Union (ITU), which specifies the format, structure, and administrative hierarchy of telephone numbers, has been exploring this protocol in which a complete, international telephone number is transformed into a series of URLs using a Domain Name System (DNS)-based architecture. However, until this approach is implemented the Commission should not alter its policy.